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IN RE SEILA LAW, LLC,)
_____)
2017-MISC-SEILA LAW, LLC-0001)
_____)

**DECISION AND ORDER ON PETITION BY SEILA LAW, LLC, TO SET ASIDE OR
MODIFY CIVIL INVESTIGATIVE DEMAND**

Seila Law, LLC, has petitioned the U.S. Consumer Financial Protection Bureau for an order to set aside or modify a civil investigative demand (CID) issued to it. For the reasons set forth below, the petition is denied.

FACTUAL BACKGROUND

On February 27, 2017, the Bureau issued a CID to Seila Law seeking information about its business. The CID’s “Notification of Purpose” stated that the CID had been issued:

to determine whether debt relief providers, lead generators, or other unnamed persons are engaging in unlawful acts or practices in the advertising, marketing, or sale of debt relief services or products, including but not limited to debt negotiation, debt elimination, debt settlement, and credit counseling, in violation of Sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; 12 U.S.C. § 5481 *et seq.*, the Telemarketing Sales Rule, 16 C.F.R. § 310.1 *et seq.*, or any other Federal consumer financial law.

The Notification of Purpose further advised that a purpose of the investigation was “also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.” The CID required Seila Law to produce documents and provide answers to interrogatories by March 27, 2017.

Pursuant to the Bureau’s rules, Seila Law was required to meet and confer with a Bureau investigator within 10 days of its receipt of the CID. 12 C.F.R. § 1080.6(c). The meet-and-confer was scheduled for March 9 but, with Bureau counsel’s agreement, rescheduled for March 10 to accommodate the schedule of Seila Law’s counsel. During the meet-and-confer, Seila Law raised three objections: (1) that the Bureau lacked authority to issue the CID because of the practice-of-law exclusion in 12 U.S.C. § 5517(e); (2) that the CID’s notification of purpose was inadequate; and (3) that several terms used in the CID’s requests were vague and overbroad. Petition, Ex. B. Seila Law timely filed its Petition to Set Aside or Modify the Civil Investigative Demand on March 19, 2017.

LEGAL DETERMINATION

Seila Law raises six objections to the CID, none of which warrants setting aside or modifying the CID.

First, Seila Law argues that the CID should be set aside because the Bureau's structure is unconstitutional or, alternatively, that any further action on the CID should be stayed until the D.C. Circuit Court of Appeals issues its *en banc* decision in *PHH Corp. v. Consumer Financial Protection Bureau*, No. 15-1177. Pet. at 2. This contention provides no basis to set aside the CID or to stay any further action on it. To begin, Seila Law has waived this objection by failing to raise it with Bureau Enforcement counsel during the meet-and-confer process. The Bureau's Rules Relating to Investigations provide that, in considering a petition to modify or set aside a CID, the Bureau "will consider only issues raised during the meet and confer process." 12 C.F.R. § 1080.6(c)(3). Seila Law's failure to raise this objection during that process is, by itself, a sufficient basis to reject it. See *In Re CheckSmart Financial Company*, 2014-MISC-Checksmart Financial Company-001, at 2 (Jan. 22, 2014).¹

In any event, Seila Law's constitutional challenge is not properly raised in this administrative proceeding. "[G]overnment agencies may not entertain a constitutional challenge to authorizing statutes." *United Space Alliance, LLC v. Solis*, 824 F. Supp. 2d 68, 97 n.10 (D.D.C. 2011); see also *Buckeye Indus., Inc. v. Sec'y of Labor, Occupational Safety & Health Review Comm'n*, 587 F.2d 231, 235 (5th Cir. 1979) ("No administrative tribunal of the United States has the authority to declare unconstitutional the Act which it is called upon to administer."); *Robinson v. United States*, 718 F.2d 336, 338 (10th Cir. 1983) (similar). Accordingly, Seila Law's constitutional objection provides no basis to modify, set aside, or stay further proceedings on the CID.

Second, Seila Law contends that the CID falls outside the Bureau's authority because Seila Law is engaged in the practice of law and, it claims, 12 U.S.C. § 5517(e) strips the Bureau of enforcement authority over the practice of law. Pet. at 3-4. This contention fails for several reasons. To begin with, this contention does not relate to the scope of the Bureau's authority to issue the CID. Under the Consumer Financial Protection Act (CFPA), the Bureau has investigative authority to issue CIDs to "any person" who may have information "relevant to a violation" of federal consumer financial law, including violations of the Telemarketing Sales Rule (TSR) or the CFPA itself. 12 U.S.C. §§ 5562(c)(1), 5481(14). Seila Law's argument does not address the scope of this investigative authority but rather prematurely raises a substantive defense to claims that the Bureau has yet to assert. As the Bureau has previously explained, such fact-based arguments about whether an entity is subject to the Bureau's enforcement authority are not valid defenses to the enforcement of a CID. See, e.g., *In Re Assurant, Inc.*, 2015-MISC-Assurant-0001, at 2 (Apr. 25, 2016);² *In Re Next Generation Debt Settlement, Inc.*, 2012-MISC-

¹ Available at http://files.consumerfinance.gov/f/201401_cfpb_order_checksmart.pdf.

² Available at https://www.consumerfinance.gov/f/documents/201604_cfpb_decision-and-order-on-petition-by-assurant-inc-to-modify-or-set-aside.pdf.

Next Generation Debt Settlement-0001, at 2 (Oct. 5, 2012).³ Indeed, courts of appeals have regularly permitted agencies to investigate without first establishing that the agency would ultimately have authority to bring an enforcement proceeding. *See FTC v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001) (“[C]ourts of appeals have consistently deferred to agency determinations of their own investigative authority, and have generally refused to entertain challenges to agency authority in proceedings to enforce compulsory process.”); *SEC v. Savage*, 513 F.2d 188, 189 (7th Cir. 1975) (holding that SEC was not required to establish that company’s commodities future contracts were “securities” within the meaning of the Securities Act before administrative subpoena would be enforced). This is because the responses to a CID may be highly relevant to determining the merits of the agency’s potential claims and the parties’ defenses, including whether the party’s actions fall within the scope of an exclusion from the Bureau’s authority. Indeed, “[i]f parties under investigation could contest substantive issues in an [administrative subpoena] enforcement proceeding, when the agency lacks the information to establish its case, administrative investigations would be foreclosed or at least substantially delayed.” *FTC v. Texaco, Inc.*, 555 F.2d 862, 879 (D.C. Cir. 1977).⁴

Moreover, the practice-of-law exclusion in § 5517(e) expressly does not “limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.” 12 U.S.C. § 5517(e)(3). These “transferred” authorities include the Telemarketing Sales Rule—one of the laws that the CID’s Statement of Purpose expressly cites as relevant to the Bureau’s investigation. *See* Dodd-Frank Act, Pub. L. No. 111-203, Title X, subtitle H, § 1100C, 124 Stat. 2110 (amending 15 U.S.C. § 6101 *et seq.*) (granting Bureau authority to enforce Telemarketing and Consumer Fraud and Abuse Prevention Act, the statute pursuant to which the TSR was promulgated). Seila Law completely ignores this provision when it cites the statute and does not make any argument that § 5517(e) somehow precludes the Bureau from enforcing the TSR against attorneys or law firms engaged in the practice of law—let alone precludes it from investigating TSR violations by such parties.

Finally, Seila Law’s argument that this CID exceeds the Bureau’s statutory authority is also foreclosed by § 5517 itself. Section 5517(n) provides that, notwithstanding provisions limiting the Bureau’s authority in some respects—including § 5517(e)’s limited exclusion for certain “activit[ies] engaged in by an attorney as part of the practice of law”—persons “subject to or described in” those provisions “may be subject to requests from, or requirements imposed by,

³ Available at http://files.consumerfinance.gov/f/201210_cfpb_2012-MISC-Next-Generation-Debt-Settlement-0001-Order.pdf.

⁴ Seila Law also asserts in passing that the CID exceeds the Bureau’s authority because it is not limited to consumer financial products and services, but rather seeks information regarding the “types of other services” that it offers. Pet. at 4. This contention fails for the same reason that Seila Law’s attempt to rely on the practice-of-law exclusion fails: Such fact-based substantive defenses to claims are not valid defenses to the enforcement of a CID. Moreover, Seila Law’s other products and services may be relevant to whether Seila Law is violating federal consumer financial law in its offering or providing of consumer financial products or services, such as by bundling consumer-financial products or services and non-consumer-financial products or services in a way to evade legal requirements.

the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with section 5512, 5562, or 5563 of this title.” 12 U.S.C. § 5517(n)(2). Thus, even in those instances where the Bureau does lack enforcement authority over an entity engaged in the practice of law, § 5517(n) makes clear that that entity is still subject to the Bureau’s CID authority under § 5562.

Third, Seila Law contends that the CID’s Notification of Purpose is insufficiently specific and thus fails to comply with the requirement that a CID state “the nature of the conduct constituting the alleged violation which is under investigation and the provisions of law applicable to such violation,” 12 C.F.R. § 1080.5. Pet. at 4-5. This objection fails, however, because the requirement that a CID state “the nature of the conduct constituting the alleged violation which is under investigation and the provisions of law applicable to such violation” does not demand a detailed narrative. On the contrary, it is “well settled that the boundaries of an [agency] investigation may be drawn ‘quite generally.’” *FTC v. O’Connell Assocs., Inc.*, 828 F. Supp. 165, 171 (E.D.N.Y. 1993) (quoting *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992)). The CID’s Notification of Purpose identifies what conduct the Bureau is investigating—namely, “whether debt relief providers, lead generators, or other unnamed persons are engaging in unlawful acts or practices in the advertising, marketing, or sale of debt relief services or products, including but not limited to debt negotiation, debt elimination, debt settlement, and credit counseling.” It also identifies the relevant substantive laws: Sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536, the Telemarketing Sales Rule, 16 C.F.R. § 310.1 *et seq.*, and any other Federal consumer financial law. The Bureau has previously found that notifications functionally equivalent to the one in this CID satisfied the requirements of the statute and regulations. *See, e.g., In Re Selling Source, LLC*, 2015-MISC-Selling Source, LLC-0001, at 1-2 (Aug. 6, 2015);⁵ *In Re CheckSmart Financial Company*, 2014-MISC-Checksmart Financial Company-001, at 2 (Jan. 22, 2014);⁶ *In Re Aspire Financial Inc.*, 2013-MISC-Aspire Financial-001, at 2 (Apr. 16, 2013).⁷ Accordingly, the Notification of Purpose here adequately informed Seila Law of the conduct of interest to the Bureau and the potentially applicable provisions of law.

Fourth, Seila Law objects that the CID is vague and overbroad because it (1) seeks information regarding “each attorney with whom You are associated or affiliated”; (2) defines “You” to include not just Seila Law, but also its founding partner, Isaac Aiono; (3) seeks information about services other than debt-relief services and consumers who have engaged Seila Law for services unrelated to debt relief; and (4) seeks agreements with other attorneys that are unrelated to debt relief or other consumer financial products and services. Pet. at 5-7. Seila Law, however, has waived these objections by failing to raise them meaningfully in the meet-and-confer process, as required by 12 C.F.R. § 1080.6(c)(3). In the meet-and-confer discussion, Bureau Enforcement counsel indicated to Seila Law’s counsel that Enforcement counsel was amenable to narrowing the requests and asked Seila Law to submit specific modification requests

⁵ Available at http://files.consumerfinance.gov/f/201508_cfpb_decision-on-petition-by-selling-source-llc-to-set-aside-civil-investigative-demand.pdf.

⁶ Available at http://files.consumerfinance.gov/f/201401_cfpb_order_checksmt.pdf.

⁷ Available at http://files.consumerfinance.gov/f/201304_CFPB_MISC-Aspire-Financial-0001Order.pdf.

in writing. Seila Law never did so. Seila Law's failure to engage meaningfully in the meet-and-confer process to resolve the modification issues without a formal petition is reason alone to deny their request to modify the CID. Seila Law, however, is welcome to engage in further discussions with the Bureau's Enforcement team about suggestions for modifications to the CID, which the Office of Enforcement may adopt if deemed appropriate.

Fifth, Seila Law objects that the CID seeks information protected by the attorney-client privilege and work product doctrine. Pet. at 7. A petition to modify or set aside a CID, however, is not the proper mechanism to raise claims of privilege. The Bureau's Rules Relating to Investigations provide that a person withholding responsive material on the basis of privilege "shall assert a claim of privilege not later than the date set for the production of the material." 12 C.F.R. § 1080.8(a). In particular, consistent with the regulation, this CID instructed Seila Law to provide a signed privilege log detailing the documents withheld and the "specific grounds for claiming that the item is privileged." *Id.* This is the proper method for Seila Law to assert any claims of privilege it may have.⁸

Sixth, Seila Law objects that the Bureau previously sought to hold Seila Law and its founding partner in contempt and that the CID is merely "a continuation of the CFPB's improper attempt to pursue Seila Law and [that partner]." Pet. at 8. Besides being waived, *see* 12 C.F.R. § 1080.6(c)(3), this argument fails on the merits. The fact that Seila Law was not held in contempt for violating a court order in no way precludes the Bureau from issuing a CID to it or investigating whether it violated federal consumer financial law.

CONCLUSION

For the foregoing reasons, Seila Law's petition to set aside or modify the CID is denied. Within 10 calendar days of this Decision and Order, Seila Law is directed to produce all responsive documents, items, and information within its possession, custody, or control that are covered by the CID. The company is welcome to engage in further discussions with the Bureau's Enforcement team about any suggestions for modifying the CID, which may be adopted by the Assistant Director for Enforcement or his Deputy as appropriate.


Richard Cordray, Director

April 10, 2017

⁸ I further note that Seila Law's conclusory assertion in its petition that it could not provide requested information about the services it has provided consumers and the fees it has charged for those services "without potentially breaching duties of confidentiality, attorney-client privilege, or turning over privileged work product," Pet. at 7, falls far short of the specificity required to support a claim of privilege.